

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
(Jackson Division)

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Civil Action No. 3:03 cv 1266 WSW

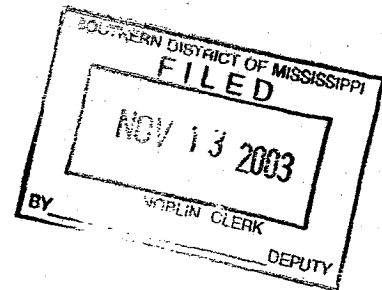
FERGUSON HARBOR SERVICE, INC.;)

FLOWERVE CORPORATION;)

SUPERIOR BOATWORKS, INC.; and)

MARITIME OIL RECOVERY, INC.)

Defendants.)



COMPLAINT

COMES NOW, the United States of America, by and through the undersigned attorneys, by authority of the Attorney General and acting at the request of the Administrator of the Environmental Protection Agency ("EPA"), and hereby alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, relating to the releases and threatened releases of hazardous substances at the Industrial Pollution Control Site ("Site") located at 810 Poindexter Street, Jackson, Hinds County, Mississippi.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the Defendants pursuant to 28 U.S.C. §§ 1331, and 1345, and 42 U.S.C. § 9613(b).

3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b), and 28 U.S.C. §

1391, because the claims arose and the threatened and actual releases of hazardous substances occurred within the Jackson Division of the Southern District of Mississippi.

DEFENDANTS

4. Defendant Ferguson Harbor Service, Inc. ("Ferguson") is incorporated in the State of Tennessee. Ferguson is a "person" within the meaning of 42 U.S.C. § 9601(21).

5. Defendant Flowserve Corporation ("Flowserve") is incorporated in the State of Texas. Upon information and belief Flowserve is the corporate successor of Worchester Controls ("Worchester") (a/k/a Worchester McCanna). Flowserve and Worchester are "person(s)" within the meaning of 42 U.S.C. § 9601(21).

6. Defendant Superior Boatworks, Inc. ("Superior") is incorporated in the State of Mississippi. Superior is a "person" within the meaning of 42 U.S.C. § 9601(21).

7. Maritime Oil Recovery, Inc. ("Maritime") is incorporated in the State of Texas. Maritime is a "person" within the meaning of 42 U.S.C. § 9601(21).

THE SITE

8. From 1991 to 1997 IPC operated the Site as a waste oil and wastewater recycling facility. During IPC's operations at the Site, the facility consisted of a main building, which contained an office, warehouse, and laboratory, a building for oil filter processing, a shed for drum storage, and many areas used for tank storage. In addition, a wastewater treatment system was located in the tank storage areas. Waste oil and wastewater were transported to the Site in 55-gallon drums and tanker trucks. After the oil and water were separated, the oil was stored in ten 15,000-gallon tanks, and the water was stored in tanks that held between 6,000 and 8,000 gallons.

9. IPC filed a Chapter 11 voluntary petition for liquidation in the US Bankruptcy Court, Southern District of Mississippi on January 14, 1997. The case number is 97-00208JEE.

10. In November 1998, the Mississippi Department of Environmental Quality notified the EPA's Emergency Response and Removal Branch (ERRB) that the Site had been abandoned and requested a removal action at the facility under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). On March 30, 1999, EPA approved a time-critical removal action to be conducted at the Site. EPA determined that the Site was a threat to public health and the environment because of the following: 1) the Site was unsecured; 2) drums at the Site were in poor condition and contained "hazardous substances" as defined by CERCLA Section 101(14), 42 U.S.C. § 9601(14), including, but not limited to, ethylbenzene, xylene, phenanthrene, benzene, toluene, pyrene, anthracene, flourene, and 4-methyl-2-pentanone. Furthermore, EPA determined that some of the used waste oil stored at the Site exceeded acceptable standards for ignitability under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq.; 3) tanks on the property containing waste oil and wastewater could potentially rupture; 4) surface water and groundwater contamination could possibly occur at the Site; and 5) additional physical hazards existed at the Site. Based on Site conditions, information obtained during the EPA's removal assessment, and the potential threat to human health and the environment, the EPA recommended that a removal action be performed under the authority of the National Contingency Plan in order to abate the imminent threats to public health and the environment.

11. Removal activities were initiated at the Site on April 5, 1999, and included media sampling, wastewater treatment, UST removal, and contaminated waste oil disposal. Waste oil,

wastewater, contaminated soil, and solidified sludge were treated and taken off-Site for disposal.

In addition, two USTs and the on-site tank farm were removed from the Site and properly disposed. Approximately 269 drums, about 200,000 gallons of wastewater, an estimated 132,000 gallons of solidified sludge, and more than 290,000 gallons of waste oil were removed from the Site.

12. There were releases and threatened releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22), of hazardous substances at or from the Site.

13. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. The United States has at least \$275,000 in unpaid response costs (including interest) incurred in responding to the releases or threatened releases of hazardous substances at the Site. Such costs were not inconsistent with the National Contingency Plan.

GENERAL ALLEGATIONS

15. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity and containing such hazardous substances . . . shall be liable for—

(A) all costs of removal or remedial action
incurred by the United States Government or a State
not inconsistent with the national contingency

plan....

16. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), also provides:

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

(A) all costs of removal or remedial action

incurred by the United States Government or a State

not inconsistent with the national contingency

plan....

FIRST CLAIM FOR RELIEF

17. Paragraphs 1 through 16 are incorporated herein by reference.

18. Upon information and belief Defendant Ferguson is jointly and severally liable for all unrecovered response costs incurred by the United States in connection with the Site pursuant to Sections 107(a)(3) and/or 107(a)(4) of CERCLA, 42 U.S.C. §§ 9607(a)(3) and/or (a)(4), as a person who accepted hazardous substances for transport to the Site and/or as a person who arranged for the disposal or treatment of hazardous substances or who arranged for transport for disposal or treatment of such substances at the Site.

SECOND CLAIM FOR RELIEF

19. Paragraphs 1 through 16 are incorporated herein by reference.

20. Upon Information and belief Defendant Flowserve is jointly and severally liable for all unrecovered response costs incurred by the United States in connection with the Site, as

the successor of Worcester Controls (a/k/a Worcester McCanna), pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3) as a person who arranged for the disposal or treatment of hazardous substances or who arranged for transport for disposal or treatment of such substances at the Site.

THIRD CLAIM FOR RELIEF

21. Paragraphs 1 through 16 are incorporated herein by reference.

22. Upon Information and belief Defendant Superior is jointly and severally liable for all unrecovered response costs incurred by the United States in connection with the Site, pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), as a person who arranged for the disposal or treatment of hazardous substances or who arranged for transport for disposal or treatment of such substances at the Site.

FOURTH CLAIM FOR RELIEF

23. Paragraphs 1 through 16 are incorporated herein by reference.

24. Upon Information and belief Defendant Maritime is jointly and severally liable for all unrecovered response costs incurred by the United States in connection with the Site, pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), as a person who arranged for the disposal or treatment of hazardous substances or who arranged for transport for disposal or treatment of such substances at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court enter:

1. Against the Defendants, jointly and severally, a judgment affixing liability for all

unpaid costs incurred by the United States relating to the Site, plus interest; and

2. Against the Defendants, an order granting such other relief as the Court deems appropriate.

Dated: Nov. 12 2003.

FOR THE UNITED STATES OF AMERICA

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